

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES L. BROWN, SR.,)	
)	
Petitioner,)	CASE NO. C06-1095-MJP-MJB
)	(CR96-548-WLD)
v.)	
)	ORDER ON PENDING MOTIONS
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

Now before the Court are the following three motions filed by Petitioner: (a) motion for expedited proceedings on 2255 motion; (b) motion for an evidentiary hearing; and (c) motion to appoint counsel. Having reviewed Petitioner's pending motions, and the remainder of the record, the Court hereby finds and ORDERS:

(1) The motion for expedited proceedings on 2255 motion (Dkt. #2) is DENIED. The Court's Order directing service of Petitioner's motion was issued on September 12, 2006, and Respondent has thirty (30) days after service to file and serve an Answer to Petitioner's § 2255 motion. In accordance with Local Rule CR 7, Petitioner's § 2255 motion will be noted for consideration on the fourth Friday after Respondent's Answer is filed.

(2) The motion for evidentiary hearing (Dkt. #3) is DENIED as premature. The court will consider whether an evidentiary hearing is necessary after consideration

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1 of all the written briefs and the record in this matter. *See* Rule 8(a), Rules Governing
2 Section 2255 Proceedings for the United States District Courts (“If the motion is not
3 dismissed, the judge must review the answer, any transcripts and records of prior
4 proceedings, and any materials submitted under Rule 7 to determine whether an
5 evidentiary hearing is warranted.”).

6 (3) The motion to appoint counsel (Dkt. #4) is DENIED. There is no right to
7 have counsel appointed in cases brought under 28 U.S.C. § 2255 unless an evidentiary
8 hearing is required. *See McClesky v. Zant*, 499 U.S. 467, 495 (1991); *United States v.*
9 *Angelone*, 894 F.2d 1129, 1130 (9th Cir. 1990); Rule 8(c) of the Rules Governing
10 Section 2255 Proceedings, 28 U.S.C. foll. § 2255. Although under 18 U.S.C. §
11 3006(A)(a)(2)(B) counsel may be appointed at any stage of the proceedings for a
12 financially eligible individual if the interests of justice so required, Petitioner fails to
13 demonstrate that he interests of justice would be best served by appointment of counsel
14 in this matter. If the Court later orders an evidentiary hearing, the Court will appoint
15 counsel, assuming Petitioner qualifies as indigent.

16 DATED this 12th day of September, 2006.

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20 MONICA J. BENTON
21 United States Magistrate Judge
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